

ESTTA Tracking number: **ESTTA197404**

Filing date: **03/10/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182171
Party	Defendant Etchegary Farms, LLC
Correspondence Address	D. Greg Durbin McCormick, Barstow, Sheppard, Wayte & Carruth LLP, 5 River Park Place East Fresno, CA 93720 UNITED STATES greg.durbin@mccormickbarstow.com
Submission	Answer
Filer's Name	J. Scott Dutcher
Filer's e-mail	greg.durbin@mccormickbarstow.com, ginny.christensen@mccormickbarstow.com, scott.dutcher@mccormickbarstow.com
Signature	/s/ J. Scott Dutcher
Date	03/10/2008
Attachments	Etchegaray Farms - Answer 91182171.pdf ( 6 pages )(489580 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Application Serial Nos.: 77005920, 77005921,  
and 77005923  
For the Mark: SUNMET  
Publication Date: October 2, 2007,  
September 25, 2007, and  
September 25, 2007

SUN-MAID GROWERS OF CALIFORNIA,

Opposer,

v.

ETCHEGARAY FARMS, LLC,

Applicant.

**Opposition No. 91182171**

**ETCHEGARAY FARMS, LLC'S ANSWER TO NOTICE OF OPPOSITION**

ETCHEGARAY FARMS, LLC ("Applicant") hereby answers and responds to the Notice of Opposition dated January 18, 2008 ("the Opposition") filed by SUN-MAID GROWERS OF CALIFORNIA ("Opposer") as follows:

1. Answering paragraph 1, Applicant admits that Opposer owns Registration No. 252,224 for SUN-MAID for "fresh grapes" in International Class 31; that Opposer's application for said registration was filed on July 23, 1928; and that it was thereafter registered on January 29, 1929. Except as admitted, Applicant lacks sufficient knowledge and information to form a belief as to the truth of the remainder, and on that basis, denies each and every remaining allegation therein.

2. Answering paragraph 2, Applicant admits that Opposer owns Registration No. 178,829 for SUN-MAID for "raisin syrup for food purposes, raisin-seed salad oil, mincemeat,

dried fruits and raisins, raisins and nuts in their natural state, and canned raisins” in International Class 29; that Opposer’s application for said registration was filed on November 29, 1922; and that it was thereafter registered on January 29, 1924. Except as admitted, Applicant lacks sufficient knowledge and information to form a belief as to the truth of the remainder, and on that basis, denies each and every remaining allegation therein.

3. Answering paragraph 3, Applicant admits that Opposer owns Registration No. 3,008,771 for SUN-MAID for “raisins, dried cherries, mixed dried fruits, diced mixed dried fruits, dried figs, dried peaches, dried plums, dried prunes, dried apricots, dried apples, dried dates, chopped dates, dried cranberries, raisin paste, jams, jellies, fruit preserves, dried nectarines, dried pears, fruit butters, fruit spreads, and marmalades” in International Class 29; “yogurt covered raisins, chocolate covered raisins, mixed raisins and coated nuts, raisin bran muffin mix, oatmeal raisin cookie mix, raisin bread, fruitcake, bagels with raisins, English muffins with raisins, raisin rice pudding; fruit syrup, candy bars, chocolate covered nuts, chocolate covered fruits, chocolate raisin clusters, candy coated raisins, cranberry bread” in International Class 30; and “fruit juices and fruit juice concentrates” in International Class 32. Applicant further admits that Opposer’s application for said registration was filed on July 28, 2004 and that it was thereafter registered on October 25, 2005. Except as admitted, Applicant lacks sufficient knowledge and information to form a belief as to the truth of the remainder, and on that basis, denies each and every remaining allegation therein.

4. Answering paragraph 4, Applicant lacks sufficient knowledge and information to form a belief as to the truth thereof, and basing its denial thereon, denies each and every allegation.

5. Answering paragraph 5, Applicant denies each and every allegation.

6. Answering paragraph 6, Applicant admits the allegations.
7. Answering paragraph 7, Applicant denies each and every allegation.
8. Answering paragraph 8, Applicant denies each and every allegation.
9. Answering paragraph 9, Applicant denies each and every allegation.
10. Answering paragraph 10, Applicant denies each and every allegation.
11. Answering paragraph 11, Applicant admits that if its SUNMET marks are registered, the registrations would presumptively entitle Applicant to prima facie exclusive ownership and rights to the SUNMET marks. Except as so admitted, Applicant denies each and every remaining allegation.

#### **General Denial**

Except as expressly admitted herein, Applicant denies each and every allegation and matter asserted in the Opposition.

#### **Affirmative Defenses**

In further answer to the Opposition, Applicant asserts each of the following, without admitting or conceding that it bears the burden of proof or burden of persuasion with respect thereto, whether in whole or part:

1. Opposer lacks standing to oppose or challenge Applicant's U.S. Trademark Application Serial Nos. 77005920, 77005921, and 77005923 (the "Applications") or to maintain this Opposition, in whole or in part.
2. The Opposition fails, in whole or in part, to state a claim upon which relief can be granted.
3. Opposer has no valid right to SUNMET as a mark or trade name.
4. The Opposition is barred, in whole or in part, by the doctrine of unclean hands.

5. The Opposition is barred, in whole or in part, by the doctrines of doctrines of consent, waiver, and/or estoppel.

6. The Opposition is barred, in whole or in part, by the doctrine of laches.

7. The Opposition is barred, in whole or in part, by the equitable doctrine of acquiescence.

8. The Opposition is barred, in whole or in part, by Applicant's prior trademark registration(s).

9. Opposer's SUN-MAID mark is not famous.

10. The Opposition fails, in whole or in part, because there is no likelihood of confusion among customers and potential customers with respect to the source of Applicant's and Opposer's products.

11. Opposer's claims, in whole or in part, are barred by all applicable statutes of limitations.

12. Applicant has priority, as its and/or its predecessor's use of the requested marks in commerce in connection with each of the goods listed in its Applications began prior to Opposer's use of its own mark in connection with its goods that Opposer maintains are similar.

13. Opposer has failed to diligently enforce its claimed rights its three trademark registrations referenced in its Notice of Opposition, and, as such, Opposer's alleged rights, if any, have therefore been abandoned.

WHEREFORE, Applicant respectfully requests that the Board dismiss the Opposition and allow Applicant's marks to proceed to registration.

Respectfully submitted,

Dated: March 10, 2008

By: 

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

D. Greg Durbin, CA Bar No. 081749

J. Scott Dutcher, CA Bar No. 244474

P.O. Box 28912

5 River Park Place East

Fresno, CA 93720-1501

Telephone: (559) 433-1300

Facsimile: (559) 433-2300

*Attorneys for Applicant*

*ETCHEGARAY FARMS, LLC*

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that the foregoing **ETCHEGARAY FARMS, LLC'S ANSWER TO NOTICE OF OPPOSITION** was filed electronically with the Trademark Trial and Appeal Board on this 10<sup>th</sup> of March, 2008.

  
J. Scott Dutcher

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **ETCHEGARAY FARMS, LLC'S ANSWER TO NOTICE OF OPPOSITION** was served upon counsel for Opposer, Sun-Maid Growers of California, this 10<sup>th</sup> of March, 2008, by sending the same via First Class U.S. Mail, postage prepaid to:

Marc M. Gorelnik  
TOWNSEND AND TOWNSEND AND CREW LLP  
Two Embarcadero Center, 8th Floor  
San Francisco, CA 94111  
*Attorney for Opposer*  
**SUN-MAID GROWERS OF CALIFORNIA**

  
J. Scott Dutcher

25318/00000-1197405.v1